

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

Government,

16 Cr 760 (RMB)

-against-

DECISION & ORDER

AHMAD RAHIMI,

Defendant.
-----X

Based upon the record in this case, including without limitation, the helpful written submissions and oral presentations of the parties, and case authorities, the Court rules as follows:

1- The Defense motion to suppress Mr. Rahimi's statements on the grounds that they were involuntary is denied as moot. The Government has stated it will not offer statements (for any purpose) made by the Defendant between September 27 and September 29, 2016 while the Defendant was in the hospital.

2- The Defense motion to suppress Mr. Rahimi's statements made at the time of the collection of hair samples and to suppress the hair sample collected from Mr. Rahimi, on the grounds that they were made or taken in violation of his constitutional rights and New York ethics rules is denied as moot. The Government has stated that it will not offer (for any purpose) the hair sample, evidence related to or derived from the hair sample, or the Defendant's statements to law enforcement during the collection of the hair sample.

3- The Defense motion to dismiss Counts Seven and Eight of the Indictment is denied on the merits. Criminal charges which have been sustained in cases analogous to the Rahimi case compel this result. See e.g., United States v. Dye, 538 F. App'x 654 (6th Cir. 2013), cert den. 134 S.Ct. 1504 (Mar. 3, 2014); United States v. Garcia, 2011 WL 4634153 (E.D.Cal. Oct. 3, 2011), aff'd 768 F.3d 822 (9th Cir. 2014); United States v. Smith, 502 F.3d 680 (7th Cir. 2007),

cert den. 552 U.S. 1206 (Feb. 19, 2008); United States v. Khalil, 214 F.3d 111 (2d Cir. 2000); and United States v. Salameh, 261 F.3d 271, 279 (2d Cir. 2001) (the 1993 World Trade Center bombing case) where the Court stated: “Defendants’ convictions on the substantive counts entailed jury findings that they had both carried the bomb from New Jersey to New York and used the bomb by detonating it in the World Trade Center. Of particular significance is the fact that transportation of the bomb, independent of its later detonation, is conduct that Congress has chosen to criminalize under a distinct statute, 18 U.S.C. § 844(d). Moreover, that very transportation was one of the objects of the conspiracy for which defendants were convicted which underlay the 924(c) charges.”

Counts Seven and Eight clearly track the language of the federal statute(s) pursuant to which Defendant is charged and clearly inform the Defendant of the offense(s) of which he is charged. An indictment is sufficient if it contains the elements of the offense(s) charged and fairly informs a defendant of the charge(s) against which he must defend. United States v. Chalmers, 474 F. Supp. 2d 555, 559 (S.D.N.Y. 2007) (citing Hamling v. United States, 418 U.S. 87, 117 (1974)). Indeed, it is said that “an indictment need do little more than to track the language of the statute charged and state the time and place (in approximate terms) of the alleged crime.” Chalmers, 474 F. Supp. 2d at 559 (quoting United States v. Stavroulakis, 952 F.2d 686, 693 (2d Cir.1992)).

Counts Seven and Eight clearly state the elements of the crimes charged, including the nature, time and place of the alleged offenses. And, they also allege the use and attempted use of a destructive device (bomb) in furtherance of other offenses which are also charged in the Indictment in Counts One, Three, Four, Two, and Five and specifically referenced in Counts

Seven and Eight.¹ So, for example, Count Seven states: “On or about September 17, 2016, in the Southern District of New York and elsewhere, AHMAD KHAN RAHIMI, a/k/a “Ahmad Khan Rahami,” the defendant, during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, to wit, the offenses charged in counts One, Three, and Four of this Indictment, knowingly did use and carry a destructive device, and, in furtherance of those crimes, possessed a destructive device, to wit, the improvised explosive device that RAHIMI placed on the street in the vicinity of 135 West 23rd Street in the Chelsea neighborhood of New York, New York. (Title 18, United States Code, Sections 924(c)(1)(A) and (B)(ii).)”²

¹The Defense argues in relation to Counts Seven and Eight that the “Supreme Court has repeatedly held the use of a firearm under § 924(c) is an act separate from the crime of violence” citing United States v. Rodriguez-Moreno, 526 U.S. 275 (1999) and Rosemond v. United States, 134 S.Ct. 1240 (2014). (Defense Motion dated May 8, 2017 at 9.) The Government contends that Counts Seven and Eight as written (including specific reference to Counts One through Five) easily withstand the motion to dismiss. See generally, Transcript of proceedings held on June 20, 2017. The Defendant’s argument sometimes has been characterized as a double jeopardy and/or multiplicitous issue, as to which the court in United States v. Dye concluded: “Supreme Court precedent holds that: where . . . a legislature specifically authorizes cumulative punishment under two statutes, regardless of whether those two statutes proscribe the same conduct, cumulative punishment may be imposed following a single trial. This circuit [i.e., the 6th Circuit] and others have held that cumulative punishment under the circumstances presented here is appropriate. We have specifically observed that the language of § 924(c) and its legislative history demonstrate that Congress intended cumulative punishment for violation of that provision and certain other predicate offenses, even if the convictions stem from the same course of conduct. Although as Dye points out, the Supreme Court has not explicitly ruled on this issue, it is clear under the applicable legal principles and the weight of authority that the imposition of cumulative punishment for Counts 2 and 3 was appropriate.” (United States v. Dye, 538 F. App’x 654, 664 (6th Cir. 2013), cert.den. 134 S.Ct. 1504 (Mar.3, 2014) (internal quotations and citations omitted).)

²Count One states: “On or about September 17, 2016, in the Southern District of New York and elsewhere, AHMAD KHAN RAHIMI, a/k/a “Ahmad Khan Rahami,” the defendant, acting without lawful authority, did knowingly use a weapon of mass destruction - namely, a destructive device as defined by 18 U.S.C. § 921 - against persons and property within the United States and (i) the mail and facilities of interstate and foreign commerce, including mobile telephones, were used in furtherance of the offense, (ii) such property was used in an activity that affects interstate and foreign commerce, (iii) the perpetrator traveled in interstate and

Similarly, Count Eight states: “On or about September 17, 2016, in the Southern District of New York and elsewhere, AHMAD KHAN RAHIMI, a/k/a “Ahmad Khan Rahami,” the defendant, during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, to wit, the offenses charged in Counts Two and Five of this Indictment, knowingly did use and carry a destructive device, and, in furtherance of that crime, possessed a destructive device, to wit, the improvised explosive device that RAHIMI placed on the street in the vicinity of 131 West 27th Street in the Chelsea neighborhood of New York, New

foreign commerce in furtherance of the offense, and (iv) the offense and the results of the offense affected interstate and foreign commerce, to wit: RAHIMI possessed, used, planted and detonated an improvised explosive device in the vicinity of 135 West 23rd Street in the Chelsea neighborhood of New York, New York. (Title 18, United States Code, Sections 2332(a)(2)(A), (a)(2)(B), (a)(3)(C), (a)(2)(D) and 2.)”

Count Three states: “On or about September 17, 2016, in the Southern District of New York and elsewhere, AHMAD KHAN RAHIMI, a/k/a “Ahmad Khan Rahami,” the defendant, did knowingly and unlawfully deliver, place, discharge and detonate an explosive and other lethal device in, into, and against a place of public use, and did attempt to do the same, with the intent to cause death and serious bodily injury, and with the intent to cause extensive destruction of such a place, and where such destruction was likely to result in major economic loss, and the offense took place in the United States, and this offense was committed in an attempt to compel the United States to do or abstain from doing any act, and a victim is a national of another state - to wit, *inter alia*, the United Kingdom and the Kingdom of Spain - to wit, RAHIMI detonated an explosive device in the vicinity of 135 West 23rd Street in the Chelsea neighborhood of New York, New York. (Title 18, United States Code, Sections 2332f (a)(1)(A), (a)(1)(B), (b)(1)(B), (b)(1)(F) and 2.)”

Count Four states: “On or about September 17, 2016 in the Southern District of New York and elsewhere, AHMAD KHAN RAHIMI, a/k/a “Ahmad Khan Rahami,” the defendant did knowingly and maliciously damage and destroy and attempt to damage and destroy, by means of fire and an explosive, a building, vehicle, and other real and personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce, to wit, RAHIMI detonated an improvised explosive device in the vicinity of 135 West 23rd Street in the Chelsea neighborhood of New York, New York, resulting in damage to buildings, vehicles, and other property and injuries to multiple persons. (Title 18, United States Code, Sections 844(i) and 2.)”

York. (Title 18 United States Code, Sections 924(c)(1)(A) and (B)(ii).).”³ Counts Seven and Eight readily withstand the Defense motion to dismiss.

4- The Court defers ruling on the Defense motion to preclude Aaron Zelin from testifying as an expert witness until after the Government has supplemented its filings on this motion with the content of the proposed Zelin testimony, including the bases and reasons upon which the testimony is to be presented. Such supplemental submission shall be made on or before June 26, 2017 (noon).

Dated: New York, New York
June 22, 2017



Hon. Richard M. Berman, U.S.D.J.

³Count Two states: “On or about September 17, 2016, in the Southern District of New York and elsewhere, AHMAD KHAN RAHIMI, a/k/a “Ahmad Khan Rahami,” the defendant, acting without lawful authority, did knowingly use and attempt to use a weapon of mass destruction - namely, a destructive device as defined by 18 U.S.C. § 921 - against persons and property within the United States, and (i) the mail and facilities of interstate and foreign commerce, including mobile telephones, were used in furtherance of the offense, (ii) such property was used in an activity that affects interstate and foreign commerce, (iii) the perpetrator traveled in interstate and foreign commerce in furtherance of the offense, and (iv) the offense and the results of the offense affected interstate and foreign commerce, to wit: RAHIMI possessed, used, planted and attempted to detonate an improvised explosive device in the vicinity of 131 West 27th Street in the Chelsea neighborhood of New York, New York. (Title 18, United States Code, Sections 2332(a)(2)(A), (a)(2)(B), (a)(3)(C), (a)(2)(D) and 2.)”

Count Five states: “On or about September 17, 2016, in the Southern District of New York and elsewhere, AHMAD KHAN RAHIMI, a/k/a “Ahmad Khan Rahami,” the defendant, did knowingly and maliciously attempt to damage and destroy, by means of fire and an explosive, a building, vehicle, and other real and personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce, to wit, RAHIMI attempted to detonate an improvised explosive device in the vicinity of 131 West 27th Street in the Chelsea neighborhood of New York, New York. (Title 18, United States Code, Sections 844(i) and 2.)”